

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

LARRY MICKEY	§	
v.	§	CIVIL ACTION NO. 9:09cv78
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Larry Mickey, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Mickey was convicted of aggravated robbery in the 217th Judicial District Court of Angelina County, Texas, on January 30, 2006, receiving a sentence of 40 years in prison. He took a direct appeal, and his conviction was affirmed by the Twelfth Judicial District Court of Appeals on September 29, 2006, Mickey did not seek discretionary review, but filed a state habeas corpus petition on November 26, 2007. This petition was denied without written order by the Texas Court of Criminal Appeals on September 10, 2008.

In his state habeas petition, Mickey complained that he was tried by an all-white jury, thus denying him a trial by jury with persons of his own race. In his federal habeas petition, Mickey complains that he received ineffective assistance of counsel, he was denied access to the law library while his trial was going on, his direct appeal was done by an attorney with whom he had never had any contact, his co-defendant was found not guilty by a racially mixed jury on “the exact same evidence,” video evidence showing differences between Mickey and the actual robber was not offered into evidence, and the lineup was tainted. Mickey acknowledged that these grounds were

not raised in his state habeas petition, saying that they are “newly discovered evidence.” His petition is not dated, but the accompanying application for leave to proceed *in forma pauperis* was signed on April 28, 2009.

After review of the pleadings, the Magistrate Judge issued a Report on June 4, 2009, recommending that the petition be dismissed. The Magistrate Judge first noted that Mickey had failed to exhaust his state remedies, in that the claims raised in the present petition were not raised in his state habeas petition and thus have never been presented to the Texas Court of Criminal Appeals. The Magistrate Judge also concluded that Mickey’s petition was barred by the statute of limitations, noting that more than one year elapsed between the time that Mickey’s conviction became final (i.e. upon the expiration of the time in which to seek discretionary review from the decision of the Court of Appeals) and the time that he filed his state habeas corpus petition. Thus, the Magistrate Judge recommended that the petition be dismissed with prejudice.

Mickey filed objections to the Magistrate Judge’s Report on May 29, 2008. These objections read, in their entirety, as follows:

I Larry Mickey #653524 received the finding of the Court on my writ of habeas corpus on 6-9-09. On page 7 of 7 I am informed I have ten days to file a objection to the finding, conclusion, and recommendations contained within the Report.

I would like this letter to be filed as my objection to the ruling on this date 9-10-09 so I may not be barred from “de novo” review by the district judge on those finding, conclusion, and recommendations contained within the Report.

As is apparent, Mickey’s objections do not contest any of the Magistrate Judge’s proposed factual findings or legal conclusions. These objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the Report of the Magistrate Judge, the Petitioner’s objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Petitioner are without merit. It is accordingly


ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Larry Mickey is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED** this the **22** day of **June, 2009**.

  
Thad Heartfield  
United States District Judge